

Rent-to-Own and Resurgence of Discrimination

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Local Human Rights Agencies Conference*

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Presenter Info

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Twitter!

EVERYONE THRIVES IN A VIBRANT COMMUNITY.



We all want access to opportunities in our neighborhoods, such as quality schools, healthcare, housing, food, jobs and transportation. However, in many communities these resources are very limited. Be a part of the movement to ensure everyone lives in safe housing and has access to opportunities that help us all succeed.

Learn how you can get involved at www.fhcci.org or 317-644-0673.

FAIR HOUSING. SHARED OPPORTUNITY IN EVERY COMMUNITY.



A public service message from the U.S. Department of Housing and Urban Development in partnership with the National Fair Housing Alliance. The federal Fair Housing Act prohibits discrimination because of race, color, religion, national origin, sex, familial status or disability. For more information, visit www.hud.gov/fairhousing.

The information
today is not
legal advice.
For legal
advice, please
consult an
attorney.

DID YOU KNOW?

Rent-to-own contracts have been historically bad products for credit-starved communities. One estimate indicates that in the 1950s, 85% of the properties purchased by African Americans in Chicago were sold on contract that resulted in loss of their homes.

Source: National Consumer Law Center. "Toxic Transactions: How Land Installment Contracts Once Again Threaten Communities of Color," 2016.



Fair Housing Center of Central Indiana (FHCCI)

The mission of the Fair Housing Center of Central Indiana (FHCCI) is to ensure equal housing opportunities by eliminating housing discrimination through advocacy, enforcement, education and outreach.

DID YOU KNOW?

Traditional mortgage foreclosure protections do not apply in rent-to-own contracts. This allows investors to inherit substantial profits while the would-be homeowners risk any equity they attempt to build.

Source: National Consumer Law Center: "Toxic Transactions: How Land Installment Contracts Once Again Threaten Communities of Color," 2016.



Fair Housing Center of Central Indiana (FHCCI)

- Nonprofit fair housing advocacy organization – 2012 start up
- Based in Indianapolis – service area of 24 Central Indiana counties, although we will go outside this area, if resources allow, due to lack of other nonprofit fair housing organizations in Indiana
- Do not have attorneys on staff or cover issues solely related to landlord/tenant law

Fair Housing Basics

Federal Fair Housing Act

- Federal Fair Housing Act passed in 1968 as part of Civil Rights Act (Title VIII) – Made it unlawful to discriminate in housing related transactions due to race, color, national origin, and religion
- In 1974, Act amended to protect due to gender
- In 1988, Act amended to protect families with children and people with disabilities
- Court cases later confirmed that zoning and housing related services (insurance, etc.) were also covered

Federal Protections Defined

- **Race** includes all races - African-American, American Indian, Caucasian, etc.
- **Color** refers to the color of one's skin
- **National Origin** means the country where one was born
- **Religion** includes one's membership in an organized religious group
- **Gender (Sex)** includes male and female *and* gender identity (Obama Administration issued guidance includes gender identity)

Federal Protections Defined

- **Disability (Handicap)** includes physical, cognitive, intellectual and mental impairments if impairment substantially limits a major life function
- **Familial Status** is the presence of one or more children under the age of 18 in the household - it includes being a parent, step-parent, adoptive parent, guardian, foster parent or custodian of a minor child, as well as any person who is pregnant or who is in the process of acquiring legal custody of a child under 18

Federal Protections Defined

- **Sexual Orientation**

- Obama Administration guidance provides protection from discrimination in federally subsidized housing
- Some Indiana localities also provide protection for all types of housing transactions – (Indianapolis, Lafayette, South Bend, Bloomington, etc.) but remedies under enforcement may be limited

DISCRIMINATION
SAYS THEY
CAN'T BE
NEIGHBORS.



THE LAW
SAYS
THEY CAN.



**FAIR
HOUSING
CENTER**
of CENTRAL INDIANA

(317) 644-0673 www.fhcci.org

Indiana Fair Housing Act

- Protects all the federal protections and also provides protection due to ancestry



**A ZIP CODE
SHOULD NOT DETERMINE
A CHILD'S FUTURE.**

Many variables can shape a child's outcome in life—like the zip code where a child grows up. That's because not all neighborhoods have the same opportunities and resources, such as quality schools, transportation, housing, healthcare, food and jobs. The good news is that there are many ways to improve our communities so that everyone has a fair chance to succeed, regardless of zip code. You can play a vital role in your local community.

Find out how at:
www.fhcci.org or 317-644-0673.



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Rent-to-Own Basics

Mechanisms to Purchase Real Property

There are multiple ways a person can purchase real property (from lowest to highest risk)

- Cash
- Traditional bank-financed Mortgage Transactions (63.7% of Americans own outright or have mortgages)
- Land Contracts
- Rent-to-Own Contracts and Lease Option Contracts

Rent-to-Buy Contract

Rent-to-buy:



Home-Buyer



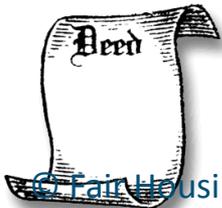
Seller finances the transaction and retains the deed to secure payment.
*Buyer starts off paying rent, and **either** exercises an **OPTION** to purchase by paying more money or has the right to purchase once other conditions have been met



Seller/Landlord

20-30 Years Later

When complete, seller must deliver good title to the buyer



Home-Seller

Rent to Own in Action

- <https://www.11alive.com/article/news/heres-how-homeowners-can-buy-a-home-but-never-really-own-it/85-540361887>

History of Rent to Own Housing Transactions

The Perfect Storm for Rent-to-Own

- Vacant, Abandoned Houses
- Habitability Issues
- Cheap Houses
- Affordability Barriers
- Lack of Traditional Credit
- Difficulties of Traditional Rental Housing
- Language & Citizenship
- People Need Housing

DID YOU KNOW?

Common problems in rent-to-own contracts:

- They're built to fail,
- Many homes need substantial repairs,
- Many times the purchase price exceeds the fair market value of the home,
- There are issues with the titles, and
- Contracts are misleading and disguised as lease-purchase

Source: National Consumer Law Center, "Toxic Transactions: How Land Installment Contracts Once Again Threaten Communities of Color," 2016.

 **FAIR HOUSING CENTER**
of CENTRAL INDIANA
www.fhcci.org

History of Rent-to-Own

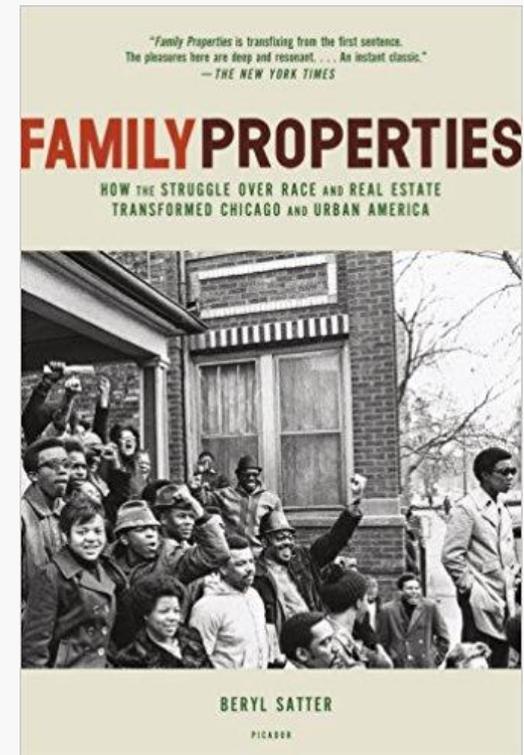
- Through much of the twentieth century, predatory and discriminatory land contracts stripped wealth from residents of minority communities and denied them the same opportunities to accumulate wealth through housing that were available in white communities.
- With redlining, the federal government and private lenders denied minority communities access to good mortgage products that dramatically expanded opportunities for homeownership.

- The subsequent government backed programs expanded access to mortgages and made them much more affordable.
- Over the next decades they assisted millions of families in obtaining the financing necessary for homeownership and to gain wealth.
- Wealth that families who benefited have been able to amass, and hand down to their children and grandchildren.
- BUT...Minorities were systematically excluded from these programs.

- Redlining left minorities who aspired to be homeowners with scarce options, and predatory actors frequently stepped in to fill the void with land contracts.
- They bought up houses at low prices in minority neighborhoods and in neighborhoods where they could scare white homeowners into fleeing at the prospect of integration.
- They then turned around and sold the house to minorities through exploitive, one-sided land contracts.

- Sales prices were unjustifiably inflated and interest rates were exorbitant, much higher than white buyers paid with their government-insured mortgages.
- Land contract buyers gained no equity, no matter how much they spent on their monthly payments and improving their homes, unless they made it all the way to the end of these predatory contracts.
- The deck was stacked against them and most never reached the end of their contracts.
- The sellers would then take the house back and “sell” it again.

- A 1962 study of Chicago illustrates the prevalence of predatory land contracts and their concentration in minority communities.
- The study found that, in one neighborhood, over 85 percent of home purchases by black residents were made through land contracts.
- By contrast, white consumers entered into land contracts infrequently, reflecting their ability to secure traditional, quality mortgage credit on fair terms.



The Plunder of Black Wealth in Chicago (May 2019 Report)

- On average, the price markup on homes sold on contract was 84 percent.
- They found that African Americans purchasing on contract, paid, on average, an additional \$587 (April 2019 dollars) more each month compared to what they would have if they paid the fair price for their home and had a conventional or FHA mortgage.
- The average black buyer paid several points more in interest on their contract loan than the average white buyer.
- ***Over the two decades studied, the amount of wealth land sales contracts expropriated from Chicago's black community was between 3.2 and 4.0 billion dollars.***

Know Your Market

Segregation in Indianapolis Metro

According to census data, Indy ranked #15

Source: William H. Frey analysis of 1990, 2000, and 2010 Censuses

Largest Metros (Total Population of 500,000 or more): Black White Segregation Indices

Rank (2010)	Name	Black-White			Change 1990-2000	Change 2010
		1990	2000	2010		
1	Milwaukee-Waukesha-West Allis, WI	82.8	83.3	81.5	0.6	
2	New York-Northern New Jersey-Long Island, NY-NJ-PA	80.9	80.2	78.0	-0.7	
3	Chicago-Naperville-Joliet, IL-IN-WI	84.4	81.2	76.4	-3.2	
4	Detroit-Warren-Livonia, MI	87.6	85.7	75.3	-1.9	
5	Cleveland-Elyria-Mentor, OH	82.8	78.2	74.1	-4.7	
6	Buffalo-Niagara Falls, NY	80.1	78.0	73.2	-2.1	
7	St. Louis, MO-IL	77.2	74.1	72.3	-3.1	
8	Cincinnati-Middletown, OH-KY-IN	75.9	73.7	69.4	-2.2	
9	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD	75.2	71.0	68.4	-4.2	
10	Los Angeles-Long Beach-Santa Ana, CA	72.7	70.0	67.8	-2.8	
11	Syracuse, NY	73.0	71.4	67.8	-1.6	
12	Bridgeport-Stamford-Norwalk, CT	69.2	69.6	67.5	0.4	
13	Youngstown-Warren-Boardman, OH-PA	74.7	72.7	67.5	-2.1	
14	Dayton, OH	76.6	73.0	66.4	-3.6	
15	Indianapolis-Carmel, IN	74.4	72.1	66.4	-2.4	

Indianapolis Market

- Indy has a high percentage of single-family houses that comprise the city's housing stock and the number and prevalence of abandoned houses.
- Most residents of Indianapolis live in single-family homes, which comprise 72% of the city's total occupied dwellings
- In 1973, the Coalition to End Neighborhood Deterioration formed to address redlining, which it described as “the basic cause of the spreading deterioration of central city neighborhoods.”
- The city's effort to address the number and growth of abandoned houses; however, started in earnest in 2003, when Mayor Peterson announced “war” on abandoned houses.

Foreclosure Crisis – Vacancy

- Nothing could prepare Indianapolis for the fallout in the wake of the 2008 housing meltdown...
- In 2000, Indianapolis had 352,000 housing units; 32,000 were vacant - a full 27%, totaling 8,769 dwellings were not available for rent or sale
- By 2010, Indianapolis had 379,000 housing units; 47,000 of which were vacant - 36%, totaling 17,322 dwellings were not available for rent or sale
- Most recent census data reports that Indianapolis has 382,055 housing units: 331,687 occupied and 50,368 vacant

Foreclosure Crisis – Abandoned

- In 2013, RealtyTrac data showed that Indianapolis had the highest rate of abandoned houses of any major city in the United States.
- 24/7 Wall St. reported that “[n]early one in three homes in foreclosure are abandoned in Indianapolis.”

DID YOU KNOW?

Rent-to-own contracts are also commonly called “land contracts,” “purchase agreements,” “conditional sales contracts,” or “land installment contracts.”



Foreclosure Crisis – Foreclosure

- In 2003, the Marion County Clerk reported that 6,892 mortgage foreclosure actions had been filed - that number climbed to 7,013 in 2004 and kept climbing:
 - 7,782 in 2005; 9,351 in 2006; 10,035 in 2007; 9,452 in 2008; 8,861 in 2009; and 8,070 in 2010.
- By 2011, foreclosure filings dropped below their 2003 level, totaling 5,432, and continued dropping to 4,077 in 2013.

People experiencing foreclosure needed somewhere else to live...

Fair Housing Cases

Demarkus R. Horne and Jackie Brown v. Harbour Portfolio VII, LP, CWAM II, LLC and Harbour Portfolio VI, LP (GA)

- Filed 3/15/17 and alleges: Harbour began purchasing properties for its contract for deed business in 2010. Harbour made a deliberate decision to purchase all, or nearly all, of its properties from mortgage finance giant Fannie Mae's portfolio of "real estate owned," or REO, properties - all of which are homes that went through foreclosure and were transferred to Fannie Mae because Fannie Mae owned or insured the mortgage loan that was foreclosed (areas with highest foreclosure rates).
- Harbour spends nothing and makes no repairs to its properties before selling them through its contract for deed program. All of Harbour's land contracts put the burden of home repairs, maintenance, property taxes, and homeowner's insurance onto the buyer. All, or almost all, of Harbour's contracts state that the buyer must bring the property up to code "within a reasonable period of time not exceeding four months."

- Harbour charges interest rates of 9.9% and 10% while prevailing interest rates for mortgage loans have hovered around 4% and by selling homes at a 400 to 500% markup, Harbour's business model allows it to reap a substantial profit even if a buyer does not default.
- Harbour marketed its contract for deed transactions exclusively, or almost exclusively, in African-American neighborhoods, because it knew that such communities had been denied access to traditional forms of mortgage credit and believed that African-American residents of these communities could be induced to purchase properties that were in very bad condition, and to pay inflated purchase prices and very high interest rates, because they believed they would not have any other way to purchase a home.

- Harbour knows that the purchasers it targets for its contract for deed transactions cannot afford to bring the property up to code within four months. Thus, Harbour knows that most purchasers will be in default on the contract almost immediately upon signing.
- Motion to Dismiss DENIED as it related to substantive federal claims (3/20/18)
- [Newslink](#)
- Settled in 2019



[i About this article](#)

A House You Can Buy, But Never Own

African Americans in the same neighborhoods decimated by subprime lending are now being targeted with new predatory loan offerings, a lawsuit argues.

THEATLANTIC.COM

FHCCI Court Challenges

- FHCCI has filed two cases challenging these transactions.
- We allege the Case Defendants are targeting the same communities targeted with land contracts last century to take advantage of people who, because of this very history, have less experience buying homes with the help of reputable lenders and are particularly vulnerable to deceptive tactics.
- Their victims gain no equity from their down payment, their monthly payments, or the improvements they make to their houses, and they stand to lose everything if they cannot stay current.
- Staying current is even harder because the houses are in such poor condition and require buyers to incur substantial expense just to make them livable.

FHCCI, et al v. Rainbow Realty

- Allegations reached FHCCI in late 2015.
- Conducted year long investigation through property records, Secretary of State filings, County violations, advertising overview, interviews of witnesses, etc.
- Filed May 30, 2017 with 5 plaintiffs.



Lawsuit targets local rent-to-own housing operator

IBJ Staff May 31, 2017

An Indianapolis-based company that has purchased and rented out hundreds of houses in the city is being sued by a not-for-profit housing group and four former customers over what they are calling a “predatory and unlawful rent-to-own scheme.”

Rainbow Realty Group Inc. and its owner, James R. Hotka, were sued Tuesday by the Fair Housing Center of Central Indiana Inc. and individuals Nelly Espinoza, Mory Kamano, Marwin Martinez and Norma Tejada.

The plaintiffs are seeking class-action status for their lawsuit, which was filed in U.S. District Court in Indianapolis by local law firm Cantrell Strenski & Mehringer and Washington, D.C.-based Relman Dane

- Federal class action court filing alleging discrimination due to race, color, and national origin under federal Fair Housing Act; the federal Equal Credit Opportunity Act, the Truth in Lending Act, Indiana Home Loan Practices Act, and Indiana landlord-tenant laws.
- Filed against Rainbow Realty Group, Empire Holding Corp., and James R. Hotka of Indianapolis, Indiana.
- The Defendants' scheme involves almost 1,000 houses in Marion County, Indiana.

FHCCI FILES DISCRIMINATION SUIT

The Fair Housing Center of Central Indiana (FHCCI) and four Indianapolis residents announced the filing of a federal class action lawsuit against Rainbow Realty Group, Empire Holding Corp. and James R. Hotka of Indianapolis. The complaint alleges the defendants violated civil rights and consumer protection laws and involves almost 1,000 houses in Marion County concentrated in high-minority neighborhoods. In addition to inflated sales prices, the defendants strip what little wealth their customers have through exorbitant interest rates and high late fees, the suit alleges. A copy of the filed complaint can be found at fhcci.org/news. If you have entered into an agreement with the defendants or believe you may have been discriminated against in a housing related transaction, please contact the Fair Housing Center of Central Indiana at (317) 644-0673 or info@fhcci.org.

Fair Housing Act

- Defendant has two offices in high minority areas:
 - The office at East 21st Street: the census block is 91% minority and the census tract is 76.3% minority.
 - The office at West 16th Street: the census block is 68.8% minority and the census tract is 75.0% minority.
- 45.1% of the County's low-value houses are in majority-minority census blocks, but 64.2% of Rainbow houses are in majority-minority census blocks.
- A minority resident of Indy/Marion County is 2.55 times as likely to live in a census block with at least one Rainbow house as a white resident.

- Defendants target minority neighborhoods because they believe that minorities are especially susceptible to their predatory scheme.
- Due to the historic denial of equal opportunities for reputable mortgages and homeownership opportunities, Defendants expect to find many vulnerable people in minority neighborhoods who they can take advantage of and deceive.
- Defendants believe they can make people in minority neighborhoods think they are being offered a great opportunity to achieve the American dream of homeownership, when they are just getting a bad deal. *That is why Defendants target minority neighborhoods.*



Since Defendants' main method of advertising their houses is to place signs on and in front of them, and the houses are disproportionately in high-minority neighborhoods, Defendants are knowingly, deliberately, and primarily advertising to Marion County's minority residents.



TILA, ECOA, etc.

- Defendants nonetheless jack up the sales price by 300%, 400%, even 500% when they sell a house through their rent-to-own program. The sales prices are vastly and unjustifiably inflated. Defendants will purchase a rundown house for \$10,000, for example, and sell it without any repairs to an unsuspecting victim for \$40,000.
- Defendants strip what little wealth their customers have by basing customers' monthly payments on exorbitant interest rates and charging high late fees. Interest rates charged by Defendants always or nearly always exceed 10% and go at least as high as 18%.
- According to Defendant Hotka, in 70% of the contracts the buyer falls behind within the first six months alone and is summarily evicted. *This happened an astonishing 95% of the time from 2009 to 2014.*

AGREEMENT:

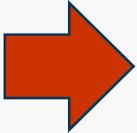
The Buyer offers to buy, the Seller agrees to sell and the Landlord agrees to rent the above property in accordance to the terms and conditions set forth below:

A. PURCHASE PRICE: Buyer agrees to pay \$ \$54,900.00 for the Property.

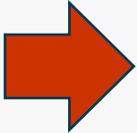
B. METHOD OF PAYMENT: "Rent to Buy" The Buyer shall pay a \$ \$.00 down payment plus make rental payments to the Landlord that are equal to the PITI Payment stated below. The 1st rental payment shall be due upon the execution of this agreement. Said payment shall apply to the current month. The Buyer shall make like payments, as rent, on the 1st of each month. Once the Buyer has made (24) twenty-four or more rental payments, the parties hereto shall execute a "Conditional Sales Contract" (Land Contract) form embodying the terms contained herein:

Principal & Interest Payment:	<u> \$608.00 </u>	June, 2016 Payment shall be \$251 (12 Days)
Term of Contract:	<u> 30 YEARS </u>	
Interest Rate:	<u> 13.02 % </u>	
Estimated Monthly Taxes:	<u> \$41.00 </u>	
Estimated Monthly Insurance:	<u> \$.00 </u>	
Total Monthly PITI Payment:	<u> \$649.00 </u>	

Interest shall commence upon the acceptance of this agreement. Each rental payment received shall be applied to the cost of the taxes & insurance and to the respective principal and interest payment of the contract had the contract began on the above date.



M. DEFAULT BY THE BUYER: Upon the failure to pay any payment due, or charges stated herein, or if Buyer, without Landlords or Sellers written consent, shall violate any terms of this agreement, Landlord and/or Seller hereby reserves the right to seek any legal remedies available. If for any reason the Property is returned to the Seller, the Buyer shall pay an additional processing fee of \$500.00 to compensate Seller for time and effort involved in curing the Buyer's default. Should the buyer fail or refuse to close the transaction, without legal cause, he shall forfeit all amounts paid (as rent). In addition the Buyer shall be responsible for payment to the Landlord for any loss of rental income for a period of (12) twelve months after possession is delivered back to the Seller or until the Landlord or Seller re-rents or sells the Property. In the event any legal action is taken to gain possession of the property or to collect delinquent payments, damages, or other costs, the Buyer agrees to pay all fees, including but not limited to: court costs, processing fees, attorney fees, fees or expenses for providing witnesses and/or evidence, moving expenses and collection costs. The buyer further agrees to pay \$250.00 for each eviction and/or claim filed, plus an hourly labor charge of \$50.00 for processing the claim.



N. PETS: No pets will be brought on the premises, inside or out, without prior written consent of the Landlord or Seller. No outside doghouses, pens, fences, cages, etc. may be erected. A **\$100.00 NON REFUNDABLE PET CHARGE PLUS \$20.00 PER MONTH PER PET** will be required if permission is granted. The Landlord / Seller hereby permit the following pets: NO PETS LISTED. Any animal(s) on the premises shall be the responsibility of the Buyer who accepts full liability for any damages or injury caused by the animal(s) to anyone or to the premises during the term of agreement. **BUYER HEREBY AGREES TO PAY A \$250 PET FINE FOR EACH PET FOUND ANYWHERE AT THE PROPERTY, WHICH IS NOT LISTED WITH THE LANDLORD OR SELLER.** Pets are not allowed to visit without written permission.

Habitability Issues

- The following problems, among others, are common:
 - Fundamental components such as water heaters, furnaces, electrical wiring, plumbing fixtures, and gas lines often are missing or badly damaged.
 - Basements flood and roofs leak.
 - Windows and doors are missing or broken.
 - Exterior and interior walls have holes.
 - There are rodent, cockroach, and/or termite infestations.
 - Floors have holes and are damaged by animal feces and urine.
 - There is extensive mold because of the leaks.

- Many of these habitability problems cannot be discerned by prospective customers.
- The utilities are turned off and so cannot be assessed adequately when customers visit a house they are considering. Water problems are hidden unless it is a rainy day (if water is even on), when people are looking at houses.
- Defendants make no mention of obtaining an independent home inspection, and their customers lack the experience to know they should or the resources to do so.
- Defendants, on the other hand, are fully aware of the poor condition of their houses. Defendant Hotka has stated that, *“I don’t think any of them are livable.”*

E. DISCLOSURE & INSPECTIONS: The Buyer acknowledges and understands that this property is owned by a Land Trust and that the owner is required to provide the Buyer with a "Seller's Residential Real Estate Sales Disclosure" form under Indiana law (IC 24-4.6-2). **The Buyer hereby acknowledges the receipt of said disclosure form.**

INITIALS

The Buyer also understands that the Seller has never lived in this property and has little or no knowledge of the properties condition and therefore makes no warranties of condition and/or habitability. The Buyer has been made aware that independent inspections disclosing the condition of the Property are available and has been afforded the opportunity prior to the execution of this agreement to acquire said inspections. The Buyer hereby agrees to purchase the Property in "AS-IS" (THE OWNER WILL MAKE NO REPAIRS) condition and hereby releases the Seller, Landlord and/or Property Manager, it's agents and/or employees of any and all liability relating to any defect or deficiency affecting the property.

F. LEAD-BASED PAINT WARNING AND DISCLOSURE: Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose a health hazard if not taken care of properly. Lead exposure is especially harmful to young children and pregnant women. The Seller hereby discloses the following: _____

This house was built prior to 1978. Lead-based paint, lead-based paint chips and lead based paint dust are present inside and outside the property.

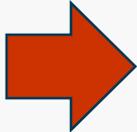
INITIALS

The Buyer hereby acknowledges that he/she were informed of the lead-based paint hazard(s) stated above. The tenant further acknowledges that they have received a copy of the above information along with a pamphlet "Protect Your Family From Lead in Your Home".

G. REAL ESTATE TAXES: The Buyer shall pay all real estate property taxes, assessments and/or liens due and payable after the acceptance of this agreement. 1/12 the annual cost of taxes & assessments shall be paid by the Buyer with the monthly principal & interest payment.

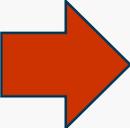
K. MAINTENANCE OF THE PROPERTY AND ADDITIONAL CHARGES: The Buyer agrees that maintaining the property and related equipment is his responsibility during the term of this agreement. The Buyer shall pay the cost of all repairs, improvements, pest control and/or maintenance to the property. (This shall include any repairs required by governmental or private agencies) All improvements made to the property shall become a permanent part of the property and remain with the property if returned to the Seller. All work done on the property shall be done on a "No Lien" basis.

- BUYER SHALL NOT REMOVE ANY PLASTER OR DRYWALL FROM THE WALLS OR CEILING WITHOUT WRITTEN PERMISSION FROM THE LANDLORD OR SELLER.
- BUYER SHALL NOT REMOVE ANY WALL STUDS OR FRAMING WITHOUT WRITTEN PERMISSION FROM THE LANDLORD OR SELLER.
- THE BUYER SHALL MAINTAIN THE PROPERTY IN A SAFE SANITARY CONDITION WITH NO PILES OF WOOD, BUILDING MATERIALS, TRASH AND DEBRIS LOCATED ANYWHERE ON THE PROPERTY.
- THE BUYER SHALL KEEP THE PROPERTY FREE OF INOPERABLE OR UNLICENSED VEHICLES.
- THE BUYER SHALL MAINTAIN THE GRASS, LAWN AREA, TREES AND SCRUBS AT THE PROPERTY.
- ANY YARD THAT REACHES (10) INCHES IN HEIGHT CAN BE CUT IMMEDIATELY WITHOUT NOTICE.
- WARNING! IF SELLER RECEIVES ANY NOTICE OF VIOLATION FROM ANY STATE OR LOCAL ENFORCEMENT AUTHORITY REGARDING ANY UNSAFE CONDITION(S) OR CODE VIOLATION(S) THAT MAY EXIST AT THE PROPERTY, THEN, LANDLORD AND/OR SELLER SHALL HAVE THE RIGHT TO IMMEDIATELY CORRECT SAID VIOLATION, WITHOUT NOTICE TO BUYER, AND CHARGE THE BUYER ALL COST AND EXPENSE TO BRING PROPERTY INTO COMPLIANCE. LANDLORD/SELLER SHALL ALSO BE ENTITLED TO AN INSPECTION FEE (MINIMUM \$50.00) FOR EACH TRIP TO THE PROPERTY PLUS ANY FINES, FEES OR EXPENSES RELATED TO SAID VIOLATION(S). UPON THE RECEIPT OF ANY ORDERS, STATED HEREIN, BUYER AGREES TO IMMEDIATELY BEGIN PAYING AN ADDITIONAL \$100 PER MONTH TOWARDS ANY COSTS, CHARGES OR FEES UNTIL SAID CHARGES ARE PAID IN FULL.



INITIALS

- Defendants turn the poor condition of the houses to their further benefit by offering to make repairs and adding the cost to their customers' monthly payment obligations.
- Defendants routinely overcharge for these repairs and do low quality work, requiring customers to then hire someone else and pay a second time, try and do the work themselves, or live with the shoddy work.
- This practice commonly causes customer's monthly debt to increase by 10%, 20%, or more, and contributes significantly to the high rate at which buyers fall behind on their rent-to-own payments.



PURCHASE AGREEMENT INTENT: Purchase Agreement is not a “rent with an option to purchase”, buyer is required to purchase and seller is required to sell under the agreed purchase price, down payment and monthly payment. Because the Purchase Agreement mentions the word “rent”, Rainbow Realty Group wishes to prevent misunderstandings and/or confusion as to the intent of this agreement. At the time of signing this agreement, buyer shall have the exclusive right to declare his/her intent in this agreement. Buyer selects the following intent. (Buyer needs to check & initial one choice below):

-RENTING: **My intent is to rent the property at** [REDACTED]
I am not buying the property. I would like the property owner to make all repairs and maintain the property. I fully understand that I will not be able to purchase the home at the price and terms stated in our agreement and that if I later decide to buy the property: seller shall have the right to increase the price to cover market conditions, cost and expense. I agree to pay rent as requested by landlord.

Initial buyers choice

-BUYING: **My intent is to purchase the property at** [REDACTED]
I am not renting the property. All payments shall apply to the principal and interest shown on the amortization schedule provided at closing. If I decide to sell the property during the term of our agreement I shall be entitled to all profits above my payoff. In Addition: I wish to save money by repairing & maintaining the property myself. I do not expect the property owner to make any repairs to the property and fully understand that I am buying the property “as-is” with out any warranty of habitability.

Initial buyers choice

BUYER'S DISCOUNT: Buyer acknowledges that he/she is receiving a substantial discount in purchase price, monthly payment and down payment in consideration for repairing and maintaining the property.

BUYER CAN'T HAVE IT BOTH WAYS: If for any reason this agreement is determined to be a “rental agreement” under IC 32-31; Then seller shall have the right to terminate the Purchase Agreement, without cause, and keep all payments tendered by buyer as rent. Seller, at seller's option, shall also have the right to repair and/or maintain the property. If seller repairs and/or maintains the property the following shall apply:

1. If buyer wishes to purchase the property:
 - a. Seller shall establish on a new monthly payment.
 - b. Buyer shall reimburse seller for any and all cost and expense of repairs.
 - c. Buyer shall reimburse seller for any and all cost and expense maintenance.
2. If buyer wishes to rent the property:
 - a. The above “RENTING” clause shall apply.
 - b. Buyer shall no longer receive a discounted monthly payment.
 - c. Seller shall have the right to establish a new monthly rent. If buyer chooses to continue possession: Buyer agrees to pay new monthly rent, without relief from valuation or appraisalment laws.
 - d. Buyer shall immediately tender a damage deposit in the amount of the rent.

FHCCI, et al v. Casas Baratas Aqui, et al

- Federal court filing on April 10, 2018 alleging discrimination due to race, color, and national origin under federal Fair Housing Act, the Equal Credit Opportunity Act, the Truth in Lending Act, and Indiana landlord-tenant and other state laws.
- Filed against Marshall Welton, who owns, operates and manages a collection of limited liability companies doing business as “Casas Baratas Aqui” (Casas Baratas or Casas), a trade name under which Welton advertises houses for rent-to-buy in Indianapolis. Several LLCs and other Defendants included.



CBS4 Story

Non-Fair Housing Cases of Interest

"They sell people a dream that's not realistic," (a former tenant) said. "They are gangsters with the paperwork."

City of Cincinnati v. Harbour Portfolio Advisors/Vision Property Management

- Defendants bought properties in bulk from Fannie Mae after the 2007-09 mortgage crisis. The companies paid just a few thousand dollars or even nothing for some properties.
- Both companies offered those properties to consumers via different types of rent-to-own contracts that offered would-be buyers neither the protections of a tenant in a traditional rental nor the protections of a mortgage holder.
- In 2017, the city accused Defendants of breaking Ohio's landlord-tenant law by putting the maintenance requirements on the tenants.
- Settlement reached in 2018 with Vision to pay the city \$88,679.61 and Harbour to pay \$125,000. Agreed to bring their properties into compliance with city code. When signing future land sale contracts, will disclose any known defects with the property and let the buyer know about any citations, liens, unpaid taxes or other issues with the property. The companies will also record all future land sale contracts with the county recorder's office.

James, Day, Austin v. Detroit Property Exchange, Homes of Detroit, et al (MI)

- Class action filed in November 2018 involving Detroit parties.
- Alleges defendants lured unassuming and vulnerable Detroiters into a "real estate bait and switch" in violation of the Truth in Lending Act and the Home Ownership Equity Protection Act.
- Homes offered through land contracts were usually dilapidated, consumers signed an "ambiguous, opaque contract" with a high interest rate, the purchaser would be under the impression that after several years of payments they would own the property, consumer evicted on a missed payment...

Katrina Carter and Quentin Lintner v. Rainbow Realty (IN)

- The trial court in 2018 entered partial summary judgment in favor of the Lintners, concluding that (1) Indiana law regulating landlord-tenant relations applied to the transaction, and, as a result, (2) Rainbow breached the warranty of habitability and (3) was prohibited from disclaiming the warranty of habitability.
- After trial to the bench on remaining issues, the trial court reiterated its earlier entry of partial summary judgment and found that Rainbow had breached the warranty of habitability and had engaged in willful and deceptive acts regarding the nature of the agreement with the Lintners. The trial court awarded the Lintners \$1,000 in compensatory damages, \$3,000 in punitive damages, and \$3,000 in attorney's fees.

- Cross appeals – Case heard before Appeals Court in early September 2018
- Indiana Appeals Court ruled in September 2018 overturning the lower court ruling stating that Rainbow was selling, not renting, the property in dispute.
- Indiana Attorney General, Indiana Association of Community Economic Development, the Neighborhood Christian Legal Clinic, the Economic Justice Project of Notre Dame Clinical Law Center and National Consumer Law Center, and the Fair Housing Center of Central Indiana all filed amicus curiae briefs in support of Carter/Lintner.
- Case was heard before Indiana Supreme Court March 2019
- Pending

Skendzel v. Marshall (IN)

- **Brief Fact Summary:** Plaintiffs brought an action to obtain possession of real estate through enforcement of a forfeiture clause in a land sale contract. The land sale contract was for a total purchase price of \$36,000.00 in yearly \$2,500.00 payments, without interest, and that in case of default, if such default should continue for 30 days, then all monies paid would be forfeited and taken as liquidated damages. Defendants had \$21,000.00 in equity at the time of default
- **Holding:** Court holds that Defendant had gained a “substantial interest” in the property, and that forfeiture would be inequitable.
- **Question:** Would the Court have held differently if the Defendant had only gained \$5,000 in equity? 330 N.E.2d 747 (Ind. Supreme Court 1975)

Solutions and Legislative Action

Solutions

- Federal or State Regulation possible in near future?
- Standardized contract with disclosure statement of overall cost, amortization schedule and who is responsible for repair, taxes, and insurance
- Requirement of an independent inspection
- Requirement of an independent appraisal
- Disclosure of code violations
- Recording requirement so clear path to title
- The CFPB is studying this issue
 - TILA requires the CFPB to issue regulations that address unfair/deceptive lending practices or those that seek to evade TILA
 - TILA has private right of action enforceable by borrowers

Illinois Legislation

- In 2017, the Illinois Legislature passed [SB 885](#) which went into effect Jan 1 2018:
 - Creation of **Installment Sales Contract Act** regulating sellers of 1-4 unit residential properties who enter into contracts more than 3 times in any 12-month period.
 - Requires a **written contract for these sales** that must include certain information, including any balloon payments due on the property and defining who is responsible for repairs, taxes and insurance. Buyers are generally responsible for these items, but that that may not be clear to the purchaser.
 - Requires the buyer to receive an **amortization schedule** prior to closing, so they understand how much of their monthly payment will be applied to principal and interest and how long it will take to pay off the loan.
 - Requires **disclosure of building code violations and fair cash value**, as reflected on tax bills, so that prospective buyers have some sense of the condition and value of the home.

- Creates a **3-day “cooling off period”** after the seller has presented the contract to the buyer in its full and final form. During this time, parties cannot be bound to sign the contract and can review an educational disclosure document provided by the seller and prepared by Office of the Attorney General that will describe issues to consider, such as having the property appraised and inspected, before signing the contract.
- Mandates the seller create a **public record of the sale** to protect the buyer’s ability to obtain a clear title to the home.
- Allows buyers 90 days to **cure defaults before the seller can try to evict them** if the buyer misses a payment.
- Bans certain **predatory loan terms**, such as putting the buyer in default of the contract for failure to repair preexisting conditions and penalties for prepaying the loan.
- Expands **foreclosure protections** for people entering into installment sales contracts

Conducting Effective Investigations

- These cases can be extremely challenging and labor intensive; however, the impact upon the housing market and consumers at risk may be significant
 - Drive through your neighborhoods – take photos of signs and note addresses – who are your major players in this market?
 - Property checks on addresses and companies – find associated LLCs
 - Research LLCs on Secretary of State websites – link registered agents, owners, principals and research any property owned
 - Review marketing – print, radio, signs, etc.

FHCCI Background

- **FHCCI et al v. Rainbow Realty:** *Complaint filed in federal court in May 2017 alleging discrimination due to race, color, and national origin under the federal Fair Housing Act, as well as violations under the federal Equal Credit Opportunity Act, the Truth in Lending Act, Indiana Home Loan Practices Act, and Indiana landlord-tenant laws. Pending.*
 - Most Recent Amended Court Complaint:
<https://www.fhcci.org/wp-content/uploads/2019/03/100-Third-Amended-Complaint.pdf>
 - Rent-to-own contracts challenged in federal court (Indy Star):
<https://www.indystar.com/story/money/2017/06/26/rent-to-own-contracts-challenged-federal-court/385195001/>
 - Lawsuits charge Rainbow Realty's rent-to-buy contracts target the most vulnerable (Indiana Lawyer):
<https://www.theindianalawyer.com/articles/print/48150-dreams-into-tears>

- **FHCCI et al v. Casas Baratas Aqui:** *Complaint filed in federal court in April 2018 alleging discrimination due to race, color, and national origin under the federal Fair Housing Act, as well as violations under the federal Equal Credit Opportunity Act, the Truth in Lending Act, and Indiana state laws. Pending.*
 - Most Recent Amended Court Complaint:
<https://www.fhcci.org/wp-content/uploads/2018/06/9-First-Amended-Complaint-003.pdf>
 - Freddie Mac Examines Loan to Possible Rent-to-Own Housing Provider (New York Times):
<https://www.nytimes.com/2018/04/27/business/freddie-mac-affordable-housing-rent-to-own.html>
 - Problem Solvers investigates rise in rent to own deals across Indianapolis (CBS-Indy):
<https://cbs4indy.com/2018/10/03/cbs4-problem-solvers-investigates-rise-in-rent-to-own-deals-across-indianapolis/>

FHCCI Resources

- **FHCCI Advocacy Page** (cases released to public):
<https://www.fhcci.org/programs/advocacy/>
- **FHCCI Lending Education Page** (includes Rent-to-Own/Land Contract Section):
<https://www.fhcci.org/programs/educational-resources/lending/>

THANK YOU!

- Sign Up for the FHCCI's FREE monthly e-newsletter at www.fhcci.org
- Save the date of April 9, 2020 in Indy for FHCCI's Annual Fair Housing Conference
- Visit our [Events Page](#) for upcoming trainings
- Visit the [FHCCI Education Page](#) (Lending Page for Rent-to-Own)
- Like the [FHCCI Facebook Page](#) or [Twitter Page](#)
- Call/email with questions!